

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 1081 - HB 874

March 3, 2013

SUMMARY OF BILL: Redefines “authorization” and “without authorization” in Tenn. Code Ann. Title 39, chapter 14, part 6.

Repeals Class A felony for unlawfully accessing a telephone system, computer system, or network in connection with an act of terrorism.

Creates a Class E felony for criminal invasion of computer privacy for intentionally accessing any computer, software, program, data, computer system, computer network, or any part thereof when the person is not authorized to do so. The offense is enhanced to a Class D felony if the invasion of computer privacy occurs on a law enforcement agency computer.

Creates a Class E felony for misuse of a computer. One misuses a computer if he or she, without authorization, intentionally makes or causes to be made an unauthorized display, use, disclosure, or copy of data communicated by or produced by the unauthorized use. The offense is enhanced to a Class D felony if the misused computer system or network was owned by a law enforcement agency. The offense is a Class A misdemeanor if the data disclosed or used is a code or password used to access the system or network and the victim suffers damages in excess of \$500 or if someone knowingly receives or retains data obtained in violation of the section.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$32,000/Incarceration*

Assumptions:

- According to statistics from the Department of Correction (DOC), there have been no admissions for unlawful access to computer system or network in connection with an act of terrorism since 2002, when the offense was enacted. It is assumed that repealing the offense will not have a significant impact on incarceration costs.
- According to statistics from the DOC, there has been an average of 0.4 admissions per year for computer offenses in the past 10 years. It is assumed that the bill would result in one admission ever three years for criminal invasion of computer privacy, a Class E felony.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth

of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.

- A recidivism discount of 33.75 percent applies, but due to the low number of admissions added by this legislation, the recidivism discount does not impact the incarceration cost under the proposed legislation.
- According to the DOC, the average operating cost per offender per day for calendar year 2013 is \$64.17.
- The average time served is 1.21 years for a Class E felony.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 1.21 years (441.95 days) for a total annualized cost of \$9,453 $[(\$64.17 \times 441.95 \text{ days}) / 3]$.
- It is assumed that the bill would result in one admission every five years for criminal invasion of computer privacy upon law enforcement, a Class D felony.
- The average time served is 1.80 years for a Class D felony.
- Population growth and recidivism will not affect the impact of this legislation.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving 1.80 years (657.45 days) for a total annualized cost of \$8,438 $[(\$64.17 \times 657.45 \text{ days}) / 5]$.
- It is assumed that the bill would result in one admission every 4 years for misuse of a computer, a Class E felony.
- Population growth and recidivism will not affect the impact of this legislation.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every four years serving 1.21 years (441.95 days) for a total annualized cost of \$7,090 $[(\$64.17 \times 441.95 \text{ days}) / 4]$.
- It is assumed that the bill would result in one admission every 6 years for misuse of a computer against law enforcement agency, a Class D felony.
- Population growth and recidivism will not affect the impact of this legislation.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every six years serving 1.80 years (657.45 days) for a total annualized cost of \$7,031 $[(\$64.17 \times 657.45 \text{ days}) / 6]$.
- The total cost of incarceration is \$32,012 $(\$9,453 + \$8,438 + \$7,090 + \$7,031)$.
- Due to the low number of convictions this bill would result in, any impact on the caseloads of the courts, district attorneys, and public defenders can be accommodated within existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/trm